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STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO September 3, 2009
BY Alerie Mow ANALYST

8 **BEFORE THE**
9 **BOARD OF PODIATRIC MEDICINE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 1B-08-189509

12 WESLEY M. KOBAYASHI, D.P.M.
18800 Main Street, Suite 104
13 Huntington Beach, California 92648

ACCUSATION

14 Doctor of Podiatric Medicine License
No. E3324,

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16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. James Rathlesberger (Complainant) brings this Accusation solely in his official
21 capacity as the Executive Officer of the Board of Podiatric Medicine, Department of Consumer
22 Affairs.

23 2. On or about July 1, 1985, the Board of Podiatric Medicine issued Doctor of Podiatric
24 License Number E3324 to Wesley Masaru Kobayashi, D.P.M. (Respondent). That license was in
25 full force and effect at all times relevant to the charges brought herein and will expire on January
26 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Podiatric Medicine (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2222 of the Code states the California Board of Podiatric Medicine shall enforce and administer this article as to doctors of podiatric medicine. Any acts of unprofessional conduct or other violations proscribed by this chapter are applicable to licensed doctors of podiatric medicine and wherever the Medical Quality Hearing Panel established under Section 11371 of the Government Code is vested with the authority to enforce and carry out this chapter as to licensed physicians and surgeons, the Medical Quality Hearing Panel also possesses that same authority as to licensed doctors of podiatric medicine.

5. The California Board of Podiatric Medicine may order the denial of an application or issue a certificate subject to conditions as set forth in Section 2221, or order the revocation, suspension, or other restriction of, or the modification of that penalty, and the reinstatement of any certificate of a doctor of podiatric medicine within its authority as granted by this chapter and in conjunction with the administrative hearing procedures established pursuant to Sections 11371, 11372, 11373, and 11529 of the Government Code. For these purposes, the California Board of Podiatric Medicine shall exercise the powers granted and be governed by the procedures set forth in this chapter.

6. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

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1 7. Section 2234 of the Code states:

2 "The Division¹ of Medical Quality shall take action against any licensee
3 who is charged with unprofessional conduct. In addition to other provisions of this
4 article, unprofessional conduct includes, but is not limited to, the following:

5 "(a) Violating or attempting to violate, directly or indirectly, assisting in or
6 abetting the violation of, or conspiring to violate any provision of this chapter
7 [Chapter 5, the Medical Practice Act].

8 (b) Gross negligence.

9 "..."

10 8. Section 2497 of the Code states:

11 "(a) The board may order the denial of an application for, or the
12 suspension of, or the revocation of, or the imposition of probationary conditions
13 upon, a certificate to practice podiatric medicine for any of the causes set forth in
14 Article 12 (commencing with Section 2220) in accordance with Section 2222.

15 "(b) The board may hear all matters, including but not limited to, any
16 contested case or may assign any such matters to an administrative law judge. The
17 proceedings shall be held in accordance with Section 2230. If a contested case is
18 heard by the board itself, the administrative law judge who presided at the hearing
19 shall be present during the board's consideration of the case and shall assist and
20 advise the board.

21 9. Section 2497.5 of the Code states:

22 "(a) The board may request the administrative law judge, under his or her
23 proposed decision in resolution of a disciplinary proceeding before the board, to
24 direct any licensee found guilty of unprofessional conduct to pay to the board a

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26 ¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008,
27 provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal.
28 Bus. & Prof. Code, §§§§ 2000, et seq.) means the "Medical Board of California," and references to the "Division of
 Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the
 Board.

1 sum not to exceed the actual and reasonable costs of the investigation and
2 prosecution of the case.

3 “(b) The costs to be assessed shall be fixed by the administrative law judge
4 and shall not in any event be increased by the board. When the board does not
5 adopt a proposed decision and remands the case to an administrative law judge, the
6 administrative law judge shall not increase the amount of any costs assessed in the
7 proposed decision.

8 “(c) When the payment directed in the board's order for payment of costs
9 is not made by the licensee, the board may enforce the order for payment by
10 bringing an action in any appropriate court. This right of enforcement shall be in
11 addition to any other rights the board may have as to any licensee directed to pay
12 costs.

13 “(d) In any judicial action for the recovery of costs, proof of the board's
14 decision shall be conclusive proof of the validity of the order of payment and the
15 terms for payment.

16 “(e) (1) Except as provided in paragraph (2), the board shall not renew
17 or reinstate the license of any licensee who has failed to pay all of the costs
18 ordered under this section.

19 “(2) Notwithstanding paragraph (1), the board may, in its
20 discretion, conditionally renew or reinstate for a maximum of one year the license
21 of any licensee who demonstrates financial hardship and who enters into a formal
22 agreement with the board to reimburse the board within one year period for those
23 unpaid costs.

24 “(f) All costs recovered under this section shall be deposited in the
25 Podiatry Fund as a reimbursement in either the fiscal year in which the costs are
26 actually recovered or the previous fiscal year, as the board may direct.

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1 **CAUSE FOR DISCIPLINE**

2 **(Gross Negligence-Patient B.L.²)**

3 10. Respondent is Board Certified by the American Board of Podiatric Surgery. He is in
4 private practice in Orange County. The acts or omissions alleged herein occurred in the scope of
5 Respondent's clinical practice.

6 11. B.L., a 55-year-old female, had been a patient of Respondent since October 2000.
7 Respondent provided treatment to her for various minor complaints.

8 12. After a long absence, B.L. returned to Respondent on or about July 20, 2007, with
9 complaints of pain and tenderness on the right arch and medial right aspect of the right foot and
10 ankle. The patient was initially provided conservative treatment for her complaints. The patient
11 had continued complaints and an MRI of the right foot was performed on August 3, 2007. The
12 results of the MRI were of a partial intrasubstance tear of the posterolateral tibial tendon. B.L. elected
13 to undergo surgical repair of the tendon tear on August 24, 2007.

14 13. The outpatient surgery was scheduled for September 17, 2007, at Fountain Valley
15 Regional Hospital. The plan was for B.L. to recuperate at home. However, just prior to surgery,
16 Respondent learned that B.L. was to be taken to a skilled nursing facility for her post-operative
17 care. Respondent was also asked to prescribe morphine³ for B.L.'s post-operative pain
18 management.

19 14. Respondent wrote post-operative instructions for B.L. on his office letterhead
20 stationary as he did not have staff privileges at the skilled nursing facility where B.L. was to be
21 admitted. Included in his post-operative instructions was a recommendation for morphine 50 mg.
22 and vistaril⁴ 25 mg. to be administered intramuscularly every four hours as needed for pain.

23 15. The tendon repair surgery was uneventful and uncomplicated as was B.L.'s
24 immediate post-operative course. At 10:50 a.m. on September 17, 2007, B.L. was discharged
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26 ² In this Accusation, the patient is referred to by initial. The patient's full name will be disclosed to
Respondent when discovery is provided pursuant to Government Code section 11507.6.

27 ³ Morphine is an opiate analgesic and Schedule II narcotic.

28 ⁴ Vistaril or Hydroxyzine Hydrochloride is a piperazine-derivative antihistamine. It is used to reduce opiate
analgesic dosage.

1 from the out patient surgery center and taken to St. Edna's Subacute Rehab Center ("St. Edna's")
2 where she was admitted at 12:00 p.m.

3 16. At St. Edna's, a nurse transcribed Respondent's post-operative recommendations on
4 the "Physician Orders" sheet in B.L.'s chart, including the recommendation for morphine 50 mg.
5 and vistaril 25 mg.

6 17. A late chart entry written on September 18, 2007, at 1:00 p.m., states that the nurse
7 obtained a telephone order on September 17, 2007, at 4:30 p.m. from Respondent. The nurse
8 charts that Respondent advised her that it was "okay to give morphine available on hand which is
9 30 mg. morphine with 25 mg. vistaril for now," as the medication as ordered had not been
10 delivered from the outside pharmacy. B.L. was medicated with morphine 30 mg. and vistaril 25
11 mg., intramuscularly.

12 18. At 7:00 p.m. on September 17, 2007, Nurse Tran charts that she obtained
13 "clarification of the morphine/vistaril order." Morphine 30 mg. with vistaril 30 mg.,
14 intramuscularly, was to be given every four hours as needed for pain management.
15 Notwithstanding the order clarification, B.L. was not given any further doses of morphine or
16 vistaril after the 4:30 p.m. dose.

17 19. At approximately 5:00 a.m. on September 18, 2007, B.L. was found unresponsive
18 with an oxygen saturation⁵ level of 84%. B.L. was taken to Garden Grove Hospital emergency
19 department, via ambulance, for an altered level of consciousness.

20 20. Respondent continued to follow B.L. up to January 28, 2008. Her right foot healed
21 and she was ambulating well by January 28, 2008.

22 21. The standard of care requires a podiatrist to prescribe narcotic analgesics within the
23 usual recommended dose. The usual adult intramuscular dosage of morphine is 10 mg., every
24 four hours as necessary to control pain. The dosage of morphine may range from 5 mg. to 20 mg.
25 every four hours as necessary, depending upon patient requirements and response. Here,
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27 ⁵ Oxygen saturation is an indicator of the percentage of hemoglobin saturated with oxygen at the time of
28 the measurement.

1 Respondent recommended that B.L. be given 50 mg. of morphine with 25 mg. of vistaril, a
2 dosage of morphine that is five times the recommended dose.

3 22. Respondent's treatment of B.L. as set forth above includes the following acts and/or
4 omissions which constitutes an extreme departure from the standard of practice:

5 A. Respondent recommended that B.L. be given 50 mg. of morphine, a dosage of a
6 narcotic analgesia that is five times the recommended dose.

7 23. Respondent's acts and/or omissions as set forth in paragraphs 10 through 21,
8 inclusive, above, whether proven individually, jointly, or in any combination thereof, constitute
9 gross negligence pursuant to section 2234 (b) of the Code. Therefore, cause for discipline exists.

10 **PRAYER**


11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Board of Podiatric Medicine issue a decision:

13 1. Revoking or suspending Doctor of Podiatric Medicine License Number E3324,
14 issued to Wesley Masaru Kobayashi, D.P.M.

15 2. Ordering him to pay the Board of Podiatric Medicine the reasonable costs of the
16 investigation and enforcement of this case, pursuant to Business and Professions Code section
17 2497.5;

18 3. Taking such other and further action as deemed necessary and proper.

19 DATED: September 3, 2009

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21 JAMES RATHLESBERGER
22 Executive Officer
23 Board of Podiatric Medicine
24 Department of Consumer Affairs
25 State of California
26 Complainant
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